

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 E) for Authority to Increase Revenue
Requirements to Recover the Costs to Replace
Steam Generators in Units 1 and 2 of the Diablo
Canyon Power Plant.

Application 04-01-009
(Filed January 9, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICES OF INTENT
TO CLAIM COMPENSATION AND PETITIONS TO INTERVENE**

1. Summary

This ruling addresses notices of intent (NOIs) to claim compensation filed by Aglet Consumer Alliance (Aglet), and The Utility Reform Network (TURN). It also addresses the NOIs filed jointly by the San Luis Obispo Mothers for Peace (SLOMFP), the Sierra Club (Sierra), and Public Citizen, Inc. (PC). As discussed herein, Aglet, TURN, SLOMFP, Sierra and PC, and have met the relevant requirements, including significant financial hardship, and are eligible to claim compensation in this proceeding.

This ruling also grants the motions to intervene filed by the Western Power Trading Forum (WPTF) and Sierra.

2. Background

Under Public Utilities Code § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim

compensation.”¹ The first prehearing conference in this proceeding was held on February 27, 2004. All NOIs were timely filed.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b) and identify whether the intervenor is; (1) a participant representing consumers, (2) a representative authorized by a customer, or (3) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. If the customer category identified is “a representative authorized by a customer,” the NOI should identify “the residential customer or customers that authorized him to represent that customer.” That identification is needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.)

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for an award of compensation.

¹ All statutory references are to the Public Utilities Code.

As defined in Section 1802(g), “Significant financial hardship” means that; (1) the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or (2), in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. A finding of significant financial hardship in no way ensures that compensation will be awarded (§ 1804(b)(2)).

3. Aglet

Aglet is an unincorporated nonprofit association organized to represent and advocate the interests of residential and small commercial customers of electric, gas, water, and telephone utilities in California. Aglet represents the specific interests of small customers.² Aglet meets the third definition of customer, as defined in § 1802(b), thus, the comparison standard applies.

Aglet’s members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation. In addition, the cost of its participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents.

A finding of significant financial hardship was determined in an Administrative Law Judge’s (ALJ) Ruling issued on April 9, 2003 in Application (A.) 02-11-017. This proceeding commenced within one year of this finding.

² All of Aglet’s members are residential utility customers, including customers of PG&E. Approximately 30% of Aglet’s members also operate small businesses with separate energy utility service.

Therefore, in accordance with § 1804(b)(1), a rebuttable presumption of eligibility exists for Aglet.

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted. Aglet plans to participate actively by conducting discovery, preparing and serving testimony, testifying, cross-examining witnesses, and filing briefs and comments, as required. Aglet plans to focus on the reasonableness of the requested interim relief, the cost-effectiveness of replacing the steam generators, future capital additions, plant useful life, and ratesetting methods.

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Aglet estimated a total budget of \$71,320 for this case, based on proposed hourly rates that will be addressed in its request for compensation.

4. TURN

TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN qualifies as a customer because it is an organization that is authorized by its articles of incorporation to represent the interests of consumers, a portion of whom we have determined to be residential customers.³ TURN meets the third definition of customer, as set forth in § 1802(b), thus, the comparison standard applies.

³ TURN provided the relevant portions of its articles of incorporation in its notice of intent in Application (A.) 98-02-017. Although TURN's articles of incorporation do not specifically refer to residential customers, its articles of incorporation authorize it to represent consumers of public utilities services. TURN has approximately 30,000 dues paying members, the majority of which are residential ratepayers. TURN does not poll

Footnote continued on next page

TURN's members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation. In addition, the cost of TURN's participation in Commission proceedings substantially outweighs the benefit to an individual customer it represents.

TURN received a finding of significant financial hardship in an ALJ Ruling issued on March 25, 2003 in A.02-07-050. This proceeding commenced within one year of this finding. Therefore, a rebuttable presumption of eligibility exists for TURN.

TURN expects to conduct discovery, prepare testimony, cross-examine witnesses, and file briefs and comments, as required. TURN had not identified specific issues at the time the NOI was filed. Its projected budget is \$157,125 for this case, based on proposed hourly rates that will be addressed in its request for compensation.

5. SLOMFP, Sierra, and PC

SLOMFP, Sierra, and PC state that they will be represented by a single law firm, and participate as a single voice. They filed a joint NOI, and will be considered together.

SLOMFP is a non-profit organization dedicated to, among other things, the principal of educating people to the need for maintaining a balance between people and the environment.⁴ SLOMFP has approximately 1,200 members, most

its members to determine whether they are residents or small businesses, so no percentage split is available.

⁴ SLOMFP provided a copy of its articles of incorporation.

of whom reside in San Louis Obispo County wherein Diablo Canyon Power Plant is located.

Sierra is a non-profit organization dedicated to preserving the environment.⁵ It has approximately 195,159 members in California, of whom 2,404 reside in San Louis Obispo County. Sierra's motion to intervene is discussed below.

PC is a non-profit organization dedicated to promoting the interests of consumers.⁶ PC has approximately 29,760 members in California.

SLOMFP, Sierra, and PC (together the Joint Parties) represent that they do not take donations from any corporate interest, and that they represent residential customers. Representation of the interests of their residential customer members in this proceeding is consistent with their bylaws or articles of incorporation. Therefore, they meet the third definition of customer, as set forth in § 1802(b). As a result, the comparison standard applies.

The Joint Parties represent that their members are small residential customers whose individual interests in this proceeding are small relative to the costs of participation. In addition, the cost of their participation in Commission proceedings substantially outweighs the benefit to an individual customer they represent. Therefore, they satisfy the requirements for financial hardship.

The Joint Parties plan to pursue discovery, present testimony, participate at hearings, and file briefs and comments, as required. They plan to focus on all issues in this proceeding. This estimated total combined budget is \$267,343 for

⁵ Sierra provided a copy of its bylaws.

⁶ PC provided a copy of its bylaws.

this case, based on proposed hourly rates that will be addressed in their request for compensation.

6. Coordination Among Parties

Each party who intends to seek intervenor compensation should ensure that its efforts complement or supplement but do not duplicate the efforts of other parties with similar interests. Parties requesting compensation should discuss amongst themselves and the Commission staff the issues each will address to promote efficiency in their showings.

Merely appearing, stating a position, and cross-examining will not assure compensation. Parties seeking intervenor compensation must demonstrate that their participation resulted in a substantial contribution to the proceeding by the unique presentation of facts or arguments that were relied upon by the ALJ or the Commission in resolving this proceeding.

7. Petitions to Intervene

WPTF is an organization dedicated to enhancing competition in western wholesale electric markets. Its members include independent power producers, wholesale marketers, retail suppliers, and other participants in wholesale electric markets. WPTF contends that its members will be affected by the outcome of this proceeding. WPTF intends to address the need for the proposed steam generator replacement, and alternatives to it. Since WPTF's members may be affected by the outcome of this proceeding, its petition to intervene will be granted.

Sierra is a non-profit organization dedicated to preserving the environment with members who reside in San Louis Obispo County wherein Diablo Canyon Power Plant is located. Since Sierra's members may be affected by the outcome of this proceeding, its petition to intervene will be granted.

Therefore, **IT IS RULED** that:

1. Aglet Consumer Alliance is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible to apply for compensation in this proceeding.

2. The Utility Reform Network is a customer as that term is defined in § 1802(b) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible to apply for compensation in this proceeding.

3. San Luis Obispo Mothers for Peace is a customer as that term is defined in § 1802(b), has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible to apply for compensation in this proceeding.

4. The Sierra Club is a customer as that term is defined in § 1802(b), has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible to apply for compensation in this proceeding.

5. The Public Citizen, Inc. is a customer as that term is defined in § 1802(b), has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship, and is found eligible to apply for compensation in this proceeding.

6. This ruling does not address whether intervenor compensation will actually be granted to any party.

7. The petitions to intervene filed by the Western Power Trading Forum and the Sierra are granted.

Dated April 15, 2004, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL

Jeffrey P. O'Donnell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notices of Intent to Claim Compensation and Petitions to Intervene on all parties of record in this proceeding or their attorneys of record.

Dated April 15, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.